

BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Senate Budget Committee	SBX1 28

SUBJECT

Accelerate Estimate Payments/Eliminate Safe Harbor for Certain Taxpayers/Repeal Tax Amnesty/ 20% Corporate Understatement Penalty/Clarify Operative Date for LLC Fee Due Date Change

SUMMARY

This bill would do the following:

1. Accelerate the amount of estimate tax payments required to be made for taxable years beginning on or after January 1, 2009, and eliminate the option for certain taxpayers to use last year's tax in calculating estimate payment requirement for current year.
2. Repeal Tax Amnesty provisions and penalty.
3. Enact a new corporation tax penalty for understatements of tax for taxable years beginning on or after January 1, 2003.
4. Clarify operative date for the requirement to estimate and pay the LLC fee of taxable years beginning on or after January 1, 2009.
5. Clarify business tax credit assignment language in AB 1452 for purposes of proper implementation of that section.

This analysis assumes enactment of Assembly Bill 1452. This analysis only addresses those provisions that impact Franchise Tax Board (FTB).

This EBR is revised to correct the revenue effect resulting from the interaction between acceleration of the amount of estimate tax payments required to be made and the elimination of the option for taxpayers to use last year's tax in calculating estimate payment requirements. The original estimate was understated. The "Summary Revenue Table" and the "Revenue Impact for Provision 1 discussion" are revised. The remainder of the department's EBR issued September 22, 2008, still applies.

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ECONOMIC IMPACT - SUMMARY REVENUE TABLE

The Summary Revenue Table in the September 22, 2008, EBR reflected the following data:

Estimated Revenue Impact of SBX1 28 Effective for tax years beginning on or after 1/1/09 Enactment Assumed After September 19, 2008 (\$ in Millions)				
Item	2007/2008	2008/09	2009/10	2010/11
Provision 1 – Eliminate estimated payment “safe harbor”	\$0	\$900	\$110	\$50
Provision 1 – Change in estimated payment amounts	\$0	\$1,270	\$240	\$165
Interaction of Provision 1	\$0	\$75	\$15	\$10
Provision 2 – Repeal of Amnesty 2009	-\$470	\$110	\$95	\$95
Provision 3 20% Corporation Underpayment Penalty	\$1,400	\$75	\$45	\$30
Provision 4 Change Effective Date of LLC Fee Payment	\$0	\$0	\$0	\$0
Provision 5 Clarification of Rules for Assignment of Credits	\$0	\$0	\$0	\$0
Total	\$930	\$2,430	\$505	\$350

The Revised Revenue Table reflects the corrected revenue estimate with the changes highlighted as follows:

Revised Estimated Revenue Impact of SBX1 28 Effective for tax years beginning on or after 1/1/09 Enactment Assumed After September 19, 2008 (\$ in Millions)				
Item	2007/2008	2008/09	2009/10	2010/11
Provision 1 – Eliminate estimated payment “safe harbor”	\$0	\$900	\$110	\$50
Provision 1 – Change in estimated payment amounts	\$0	\$1,270	\$240	\$165
Interaction of Provision 1	\$0	\$135	\$25	\$20
Provision 2 – Repeal of Amnesty 2009	-\$470	\$110	\$95	\$95
Provision 3 20% Corporation Underpayment Penalty	\$1,400	\$75	\$45	\$30
Provision 4 Change Effective Date of LLC Fee Payment	\$0	\$0	\$0	\$0
Provision 5 Clarification of Rules for Assignment of Credits	\$0	\$0	\$0	\$0
Total	\$930	\$2,490	\$515	\$360

PROVISION 1. ACCELERATE ESTIMATE PAYMENTS AND REMOVE OPTION FOR CERTAIN TAXPAYERS TO USE PRIOR YEAR'S TAX WHEN CALCULATING REQUIRED ESTIMATE PAYMENT.

ECONOMIC IMPACT

REVISED Estimated Revenue Impact of Acceleration of Estimate Payment and Elimination of Safe Harbor For Calculation of Estimate Tax Payments Effective for Tax Years BOA January 1, 2009 (\$ in Millions)			
Item	2008/09	2009/10	2010/11
Eliminate estimated payment "safe harbor" if AGI \$1 million or more	\$900	\$110	\$50
Change in estimated payment amounts	\$1,270	\$240	\$165
Interaction of estimate payment provisions	\$135	\$25	\$20

The revenue impact for this provision is based on data on large April payments in 2007. The DOF revenue forecast suggests that April payments in 2010 will be similar to the level of payments in April 2007. It was estimated from this data that \$2.5 billion in large April payments were coming from taxpayers who were relying on the 110% prior year safe harbor for estimated payments and who had income greater than \$1 million. It was assumed that 75% of these taxpayers would adjust their payment patterns so as to avoid an estimated tax penalty. Therefore, there would be \$1.9 billion in final payments under current law that would become estimated payments under this provision ($\$2.5 \text{ billion} \times 75\% = \text{about } \1.9 .) One-half of this would be paid in the first two estimated payments and thus create an acceleration of revenue into 2008/09. The first year revenue number is, therefore, $\$1.9 \text{ billion} \times 50\%$, or about \$950 million. We then back out the payments from estates and trusts, which are exempt from this law change, and the revenue impact drops down to \$900 million in 2008/09.

In subsequent years, we calculate, in a similar fashion, the revenue accelerated because of increased estimated payments. However, for each subsequent year we also subtract out the decrease in payments due to the payments that had been accelerated to the prior year.

Change in Estimated Payment Amounts

The revenue impact for the change in the estimate payment amounts is based on data on estimated tax payments that are forecast to be made from February through June of 2009 for PIT taxpayers and the estimated payments that are forecast to be made in April and June of 2009 for corporate taxpayers. These estimated payments total \$8.4 billion. The increase of the estimated payment rate from 25% of annual tax to 30% of annual tax represents an increase of 20%. Thus, the additional estimated payments in the first six months of 2009, assuming taxpayers fully comply with this new law, are expected to be \$1.7 billion ($\$8.4 \text{ billion} \times 20\% = \1.7).

It is assumed that compliance would only be 75% in the first year. Therefore the new revenue in 08/09 would be about \$1.27 billion ($\$1.7 \text{ billion} \times 75\% = \text{about } \1.27 billion). In subsequent years, we would calculate, in a similar fashion, the revenue accelerated because of increased estimated payments. However, for each subsequent year we also subtract out the decrease in payments due to the payments that had been accelerated to the prior year.

Interaction of Provisions

The revenue impact of each of these provisions was estimated as if each were independent of any other provision. However, if enacted together, these interact with each other and increase the revenue estimate for the bill as a whole. The interaction is estimated at \$135 million in fiscal year 2008/09, and \$25 million for fiscal year 2009/10 and \$20 million for 2010/11.

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